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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,225	03/29/2004	Gary R. Kish	METZ 2 00008	3030
27885	7590	03/27/2007		
FAY SHARPE LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/812,225	Applicant(s) KISH ET AL.	
	Examiner Timothy M. Ayres	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/12/07 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-8, 10 and 20-25 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification and drawings show the periphery of the opening surrounded by both the first wall and the first flange. Figure 3 shows an opening (32), and as considered by the examiner the opening is a rectangle with four sides, one side of the periphery of the opening is formed from the first wall (10) and the other three sides of

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the periphery of the opening are formed from the first flange (14). It is unclear how the first flange alone can surround the periphery of the wheel or opening since the first flange only is around a portion of the periphery of the opening in the disclosed embodiment and the first wall is around the rest of the other portion of the periphery of the opening.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "a portion of the first flange" in line 16. There is insufficient antecedent basis for this limitation in the claim. It is unclear if this portion is the same as the first or second portion described previously in the claim or is a third portion.

Claim Rejections - 35 USC § 103

7. Claims 1-8, 10, and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,93,210 to Marzolf in view of US patent 4,919,548 to Lautenschlager and US Patent 5,470,144 to Wen. Marzolf teaches a cabinet runner (33) with a first wall (35). A first lower flange (37) and a second upper flange (36) extend substantially normal from the first wall (35). Holes (46) allow for screws to fastening the cabinet runner to cabinet side. An opening (43) in the first flange (37) allows for a wheel

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(56) to protrude through as seen in figures 10-14. A mounting (49) is welded to the first wall (35) and is considered to be a portion (49) of the first flange (37). Thereby the opening (43) has its periphery surrounded by the first wall (35,49) and the first flange (37). Marzolf does not expressly disclose a second portion extending substantially normal from a first portion of the first flange and tabs extending from the second side of the first wall as substantially claimed.

8. Lautenschlager teaches a cabinet runner (32) with a first flange (38,42) and a second flange (20,40) extending from a first wall (34). The first flange (38,42) includes a first portion (38) and a second portion (42).

9. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the cabinet runner of Marzolf by adding a second portion to the first flange as taught by Lautenschlager to reduce lateral shifting or cross play.

10. Marzolf in view of Lautenschlager does not expressly disclose tabs extending from the second side of the first wall as substantially claimed.

11. Wen teaches two embodiments first is figure 10 -12 and the second embodiment of figures 13-15. Both embodiments are a cabinet runner (21,31) with a first wall (22,33) that has first (28,35) and second (27,34) flanges. The second embodiment teaches using multiple tabs (36,37) at both ends of the runner.

12. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the cabinet runner of Marzolf in view of Lautenschlager by adding the tabs as configured in the second embodiment of Wen to allow for adjustability in

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height of a multiple drawer system and so that the rail assembly has two hooks attached to each rail on cabinet making it sturdier and capable of holding more weight.

13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,93,210 to Marzolf in view of US patent 4,919,548 to Lautenschlager and US Patent 5,890,784 to Domig. Marzolf teaches a cabinet runner (33) with a first wall (35). A first lower flange (37) and a second upper flange (36) extend substantially normal from the first wall (35). Holes (46) allow for screws to fastening the cabinet runner to cabinet side. An opening (43) in the first flange (37) allows for a wheel (56) to protrude through as seen in figures 10-14. A mounting (49) is welded to the first wall (35) and is considered to be a portion (49) of the first flange (37). Thereby the opening (43) has its periphery surrounded by the first wall (35,49) and the first flange (37). Marzolf does not expressly disclose a second portion extending substantially normal from a first portion of the first flange and tabs extending from the second side of the first wall as substantially claimed.

14. Lautenschlager teaches a cabinet runner (32) with a first flange (38,42) and a second flange (20,40) extending from a first wall (34). The first flange (38,42) includes a first portion (38) and a second portion (42).

15. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the cabinet runner of Marzolf by adding a second portion to the first flange as taught by Lautenschlager to reduce lateral shifting or cross play.

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16. Marzolf in view of Lautenshlager does not expressly disclose tabs extending from the second side of the first wall as substantially claimed.

17. Domig teaches a cabinet runner (1) with a first wall. The first wall has a first flange with a first and second portion seen in figure 6 as the top flange and a second flange is the bottom flange also as seen in figure 6. A first tab (13) and a second tab (11) are located in the first wall and have the shape and structure substantially as claimed.

18. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the cabinet runner of Marzolf in view of Lautenshlager by using the tab structure and supporting strip of Domig to provide a stronger connection that is rattle proof.

19. Claims 1-8, 10, and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,93,210 to Marzolf in view of US patent 4,919,548 to Lautenschlager and US Patent 5,890,784 to Domig as applied to claim 20 above, and further in view of US Patent 5,470,144 to Wen. Marzolf in view of Lautenschlager and Domig discloses every element as claimed and discussed above except a second tab positioned adjacent to the first end of the first wall, a third tab, and a fourth tab. Wen teaches two embodiments first is figure 10 -12 and the second embodiment of figures 13-15. Both embodiments are a cabinet runner (21,31) with a first wall (22,33) that has first (28,35) and second (27,34) flanges. The second embodiment teaches using multiple tabs (36,37) at both ends of the runner.

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20. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the cabinet runner of Marzolf in view of Lautenschlager and Domig by adding a second tab to the first end of the first wall as taught by Wen to allow for a rail assembly with two hooks attached to the cabinet making it sturdier and capable of holding more weight.

Response to Arguments

21. Applicant's arguments with respect to the claim 1 have been considered but are moot in view of the new ground(s) of rejection. In regards to arguments to the 112.1 rejection, figure 3 does show an opening (32), and as considered by the examiner the opening is a rectangle with four sides, one side of the periphery of the opening is formed from the first wall (10) and the other three sides of the periphery of the opening are formed from the first flange (14). The examiner considers the term "surrounded" to mean that all four sides are formed from the same element. In the applicant's argument's filed on 3/12/07 it is stated first that the periphery of the opening is surrounded by the lower flange (14) and secondly surrounded by either the first wall (10) or the first flange (14). Both of these are not enabled by the specification and the examiner considers the periphery of the opening surrounded by both the first wall and the first flange to be the enabled subject matter in the specification and figure 3 as described above. Also please note that US Patent 2,273,918 teaches in figure 14 a wheel protruding through an opening in the first flange wherein the wheel is attached to the first wall and a second portion of the first flange.

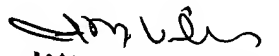
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA
3/19/07



JANET M. WILKENS
PRIMARY EXAMINER
1712337